

AMENDED IN SENATE JULY 8, 2013
AMENDED IN ASSEMBLY APRIL 23, 2013
AMENDED IN ASSEMBLY MARCH 21, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1008

Introduced by Assembly Member ~~Torres~~ *Buchanan*

February 22, 2013

An act to amend Section ~~69841~~ of the Government Code ~~101850~~ of the Health and Safety Code, relating to ~~courts~~ health care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1008, as amended, ~~Torres~~ *Buchanan*. ~~Civil procedure: judges.~~
Alameda County Medical Center: privatization of services.

Existing law authorizes the board of supervisors of Alameda County to establish an independent hospital authority strictly and exclusively dedicated to the management, administration, and control of the Alameda Medical Center, and sets forth the powers and duties of the hospital authority, including, but not limited to, the power to contract for services required to meet its obligations.

This bill would prohibit the hospital authority from privatizing any work performed as of March 31, 2013, by physicians and surgeons employed by the authority without clear and convincing evidence that the needed medical care can only be delivered cost-effectively by a private contractor. The bill would require that the authority, prior to privatization of any of those services, negotiate with the representative of its physician and surgeon employees over the decision to privatize, and would require unresolved disputes to be submitted to final binding arbitration.

This bill would make legislative findings and declarations as to the necessity of a special statute for resolving the unique needs faced by the county with respect to the operation and administration of the medical center.

~~Existing law requires the clerk of the superior court to attend each session of the superior court in the county and upon the judges of the court in chambers when required. Existing law authorizes a judge to perform any act required or permitted to be performed by a clerk of the court.~~

~~This bill would provide that the above-described requirements of a court clerk are required notwithstanding the latter provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 101850 of the Health and Safety Code is
2 amended to read:
3 101850. The Legislature finds and declares the following:
4 (a) (1) Due to the challenges facing the Alameda County
5 Medical Center arising from changes in the public and private
6 health industries, the Alameda County Board of Supervisors has
7 determined that a transfer of governance of the Alameda County
8 Medical Center to an independent governing body, a hospital
9 authority, is needed to improve the efficiency, effectiveness, and
10 economy of the community health services provided at the medical
11 center. The board of supervisors has further determined that the
12 creation of an independent hospital authority strictly and
13 exclusively dedicated to the management, administration, and
14 control of the medical center, in a manner consistent with the
15 county's obligations under Section 17000 of the Welfare and
16 Institutions Code, is the best way to fulfill its commitment to the
17 medically indigent, special needs, and general populations of
18 Alameda County. To accomplish this, it is necessary that the board
19 of supervisors be given authority to create a hospital authority.
20 Because there is no general law under which this authority could
21 be formed, the adoption of a special act and the formation of a
22 special authority is required.
23 (2) The following definitions shall apply for purposes of this
24 section:

1 (A) “The county” means the County of Alameda.

2 (B) “Governing board” means the governing body of the hospital
3 authority.

4 (C) “Hospital authority” means the separate public agency
5 established by the Board of Supervisors of Alameda County to
6 manage, administer, and control the Alameda County Medical
7 Center.

8 (D) “Medical center” means the Alameda County Medical
9 Center.

10 (b) The board of supervisors of the county may, by ordinance,
11 establish a hospital authority separate and apart from the county
12 for the purpose of effecting a transfer of the management,
13 administration, and control of the medical center in accordance
14 with Section 14000.2 of the Welfare and Institutions Code. A
15 hospital authority established pursuant to this chapter shall be
16 strictly and exclusively dedicated to the management,
17 administration, and control of the medical center within parameters
18 set forth in this chapter, and in the ordinance, bylaws, and contracts
19 adopted by the board of supervisors which shall not be in conflict
20 with this chapter, Section 1442.5 of this code, or Section 17000
21 of the Welfare and Institutions Code.

22 (c) A hospital authority established pursuant to this chapter shall
23 be governed by a board that is appointed, both initially and
24 continually, by the Board of Supervisors of the County of Alameda.
25 This hospital authority governing board shall reflect both the
26 expertise necessary to maximize the quality and scope of care at
27 the medical center in a fiscally responsible manner and the diverse
28 interest that the medical center serves. The enabling ordinance
29 shall specify the membership of the hospital authority governing
30 board, the qualifications for individual members, the manner of
31 appointment, selection, or removal of governing board members,
32 their terms of office, and all other matters that the board of
33 supervisors deems necessary or convenient for the conduct of the
34 hospital authority’s activities.

35 (d) The mission of the hospital authority shall be the
36 management, administration, and other control, as determined by
37 the board of supervisors, of the group of public hospitals, clinics,
38 and programs that comprise the medical center, in a manner that
39 ensures appropriate, quality, and cost-effective medical care as
40 required of counties by Section 17000 of the Welfare and

1 Institutions Code, and, to the extent feasible, other populations,
2 including special populations in Alameda County.

3 (e) The board of supervisors shall adopt bylaws for the medical
4 center that set forth those matters related to the operation of the
5 medical center by the hospital authority that the board of
6 supervisors deems necessary and appropriate. The bylaws shall
7 become operative upon approval by a majority vote of the board
8 of supervisors. Any changes or amendments to the bylaws shall
9 be by majority vote of the board of supervisors.

10 (f) The hospital authority created and appointed pursuant to this
11 section is a duly constituted governing body within the meaning
12 of Section 1250 and Section 70035 of Title 22 of the California
13 Code of Regulations as currently written or subsequently amended.

14 (g) Unless otherwise provided by the board of supervisors by
15 way of resolution, the hospital authority is empowered, or the
16 board of supervisors is empowered on behalf of the hospital
17 authority, to apply as a public agency for one or more licenses for
18 the provision of health care pursuant to statutes and regulations
19 governing licensing as currently written or subsequently amended.

20 (h) In the event of a change of license ownership, the governing
21 body of the hospital authority shall comply with the obligations
22 of governing bodies of general acute care hospitals generally as
23 set forth in Section 70701 of Title 22 of the California Code of
24 Regulations, as currently written or subsequently amended, as well
25 as the terms and conditions of the license. The hospital authority
26 shall be the responsible party with respect to compliance with these
27 obligations, terms, and conditions.

28 (i) (1) Any transfer by the county to the hospital authority of
29 the administration, management, and control of the medical center,
30 whether or not the transfer includes the surrendering by the county
31 of the existing general acute care hospital license and corresponding
32 application for a change of ownership of the license, shall not
33 affect the eligibility of the county, or in the case of a change of
34 license ownership, the hospital authority, to do any of the
35 following:

36 (A) Participate in, and receive allocations pursuant to, the
37 California Healthcare for the Indigent Program (CHIP).

38 (B) Receive supplemental reimbursements from the Emergency
39 Services and Supplemental Payments Fund created pursuant to
40 Section 14085.6 of the Welfare and Institutions Code.

1 (C) Receive appropriations from the Medi-Cal Inpatient Payment
2 Adjustment Fund without relieving the county of its obligation to
3 make intergovernmental transfer payments related to the Medi-Cal
4 Inpatient Payment Adjustment Fund pursuant to Section 14163 of
5 the Welfare and Institutions Code.

6 (D) Receive Medi-Cal capital supplements pursuant to Section
7 14085.5 of the Welfare and Institutions Code.

8 (E) Receive any other funds that would otherwise be available
9 to a county hospital.

10 (2) Any transfer described in paragraph (1) shall not otherwise
11 disqualify the county, or in the case of a change in license
12 ownership, the hospital authority, from participating in any of the
13 following:

14 (A) Other funding sources either specific to county hospitals or
15 county ambulatory care clinics or for which there are special
16 provisions specific to county hospitals or to county ambulatory
17 care clinics.

18 (B) Funding programs in which the county, on behalf of the
19 medical center and the Alameda County Health Care Services
20 Agency, had participated prior to the creation of the hospital
21 authority, or would otherwise be qualified to participate in had the
22 hospital authority not been created, and administration,
23 management, and control not been transferred by the county to the
24 hospital authority, pursuant to this chapter.

25 (j) A hospital authority created pursuant to this chapter shall be
26 a legal entity separate and apart from the county and shall file the
27 statement required by Section 53051 of the Government Code.
28 The hospital authority shall be a government entity separate and
29 apart from the county, and shall not be considered to be an agency,
30 division, or department of the county. The hospital authority shall
31 not be governed by, nor be subject to, the charter of the county
32 and shall not be subject to policies or operational rules of the
33 county, including, but not limited to, those relating to personnel
34 and procurement.

35 (k) (1) Any contract executed by and between the county and
36 the hospital authority shall provide that liabilities or obligations
37 of the hospital authority with respect to its activities pursuant to
38 the contract shall be the liabilities or obligations of the hospital
39 authority, and shall not become the liabilities or obligations of the
40 county.

1 (2) Any liabilities or obligations of the hospital authority with
2 respect to the liquidation or disposition of the hospital authority's
3 assets upon termination of the hospital authority shall not become
4 the liabilities or obligations of the county.

5 (3) Any obligation of the hospital authority, statutory,
6 contractual, or otherwise, shall be the obligation solely of the
7 hospital authority and shall not be the obligation of the county or
8 the state.

9 (l) (1) Notwithstanding any other provision of this section, any
10 transfer of the administration, management, or assets of the medical
11 center, whether or not accompanied by a change in licensing, shall
12 not relieve the county of the ultimate responsibility for indigent
13 care pursuant to Section 17000 of the Welfare and Institutions
14 Code or any obligation pursuant to Section 1442.5 of this code.

15 (2) Any contract executed by and between the county and the
16 hospital authority shall provide for the indemnification of the
17 county by the hospital authority for liabilities as specifically set
18 forth in the contract, except that the contract shall include a
19 provision that the county shall remain liable for its own negligent
20 acts.

21 (3) Indemnification by the hospital authority shall not be
22 construed as divesting the county from its ultimate responsibility
23 for compliance with Section 17000 of the Welfare and Institutions
24 Code.

25 (m) Notwithstanding the provisions of this section relating to
26 the obligations and liabilities of the hospital authority, a transfer
27 of control or ownership of the medical center shall confer onto the
28 hospital authority all the rights and duties set forth in state law
29 with respect to hospitals owned or operated by a county.

30 (n) (1) A transfer of the maintenance, operation, and
31 management or ownership of the medical center to the hospital
32 authority shall comply with the provisions of Section 14000.2 of
33 the Welfare and Institutions Code.

34 (2) A transfer of maintenance, operation, and management or
35 ownership to the hospital authority may be made with or without
36 the payment of a purchase price by the hospital authority and
37 otherwise upon the terms and conditions that the parties may
38 mutually agree, which terms and conditions shall include those
39 found necessary by the board of supervisors to ensure that the

1 transfer will constitute an ongoing material benefit to the county
2 and its residents.

3 (3) A transfer of the maintenance, operation, and management
4 to the hospital authority shall not be construed as empowering the
5 hospital authority to transfer any ownership interest of the county
6 in the medical center except as otherwise approved by the board
7 of supervisors.

8 (o) The board of supervisors shall retain control over the use of
9 the medical center physical plant and facilities except as otherwise
10 specifically provided for in lawful agreements entered into by the
11 board of supervisors. Any lease agreement or other agreement
12 between the county and the hospital authority shall provide that
13 county premises shall not be sublet without the approval of the
14 board of supervisors.

15 (p) The statutory authority of a board of supervisors to prescribe
16 rules that authorize a county hospital to integrate its services with
17 those of other hospitals into a system of community service that
18 offers free choice of hospitals to those requiring hospital care, as
19 set forth in Section 14000.2 of the Welfare and Institutions Code,
20 shall apply to the hospital authority upon a transfer of maintenance,
21 operation, and management or ownership of the medical center by
22 the county to the hospital authority.

23 (q) The hospital authority shall have the power to acquire and
24 possess real or personal property and may dispose of real or
25 personal property other than that owned by the county, as may be
26 necessary for the performance of its functions. The hospital
27 authority shall have the power to sue or be sued, to employ
28 personnel, and to contract for services required to meet its
29 obligations. *The hospital authority shall not privatize any work*
30 *performed as of March 31, 2013, by physicians and surgeons*
31 *employed by the authority without clear and convincing evidence*
32 *that the needed medical care can only be delivered cost-effectively*
33 *by a private contractor. Prior to privatization of any of those*
34 *services, the authority shall negotiate with the representative of*
35 *its physician and surgeon employees over the decision to privatize*
36 *and, if unable to resolve any dispute through negotiations, shall*
37 *submit the matter to final binding arbitration.*

38 (r) Any agreement between the county and the hospital authority
39 shall provide that all existing services provided by the medical
40 center shall continue to be provided to the county through the

1 medical center subject to the policy of the county and consistent
2 with the county's obligations under Section 17000 of the Welfare
3 and Institutions Code.

4 (s) A hospital authority to which the maintenance, operation,
5 and management or ownership of the medical center is transferred
6 shall be a "district" within the meaning set forth in the County
7 Employees Retirement Law of 1937 (Chapter 3 (commencing with
8 Section 31450) of Part 3 of Division 4 of Title 3 of the Government
9 Code). Employees of a hospital authority are eligible to participate
10 in the County Employees Retirement System to the extent
11 permitted by law.

12 (t) Members of the governing board of the hospital authority
13 shall not be vicariously liable for injuries caused by the act or
14 omission of the hospital authority to the extent that protection
15 applies to members of governing boards of local public entities
16 generally under Section 820.9 of the Government Code.

17 (u) The hospital authority shall be a public agency subject to
18 the Myers-Milias-Brown Act (Chapter 10 (commencing with
19 Section 3500) of Division 4 of Title 1 of the Government Code).

20 (v) Any transfer of functions from county employee
21 classifications to a hospital authority established pursuant to this
22 section shall result in the recognition by the hospital authority of
23 the employee organization that represented the classifications
24 performing those functions at the time of the transfer.

25 (w) (1) In exercising its powers to employ personnel, as set
26 forth in subdivision (p), the hospital authority shall implement,
27 and the board of supervisors shall adopt, a personnel transition
28 plan. The personnel transition plan shall require all of the
29 following:

30 (A) Ongoing communications to employees and recognized
31 employee organizations regarding the impact of the transition on
32 existing medical center employees and employee classifications.

33 (B) Meeting and conferring on all of the following issues:

34 (i) The timeframe for which the transfer of personnel shall occur.
35 The timeframe shall be subject to modification by the board of
36 supervisors as appropriate, but in no event shall it exceed one year
37 from the effective date of transfer of governance from the board
38 of supervisors to the hospital authority.

39 (ii) A specified period of time during which employees of the
40 county impacted by the transfer of governance may elect to be

1 appointed to vacant positions with the Alameda County Health
2 Care Services Agency for which they have tenure.

3 (iii) A specified period of time during which employees of the
4 county impacted by the transfer of governance may elect to be
5 considered for reinstatement into positions with the county for
6 which they are qualified and eligible.

7 (iv) Compensation for vacation leave and compensatory leave
8 accrued while employed with the county in a manner that grants
9 affected employees the option of either transferring balances or
10 receiving compensation to the degree permitted employees laid
11 off from service with the county.

12 (v) A transfer of sick leave accrued while employed with the
13 county to hospital authority employment.

14 (vi) The recognition by the hospital authority of service with
15 the county in determining the rate at which vacation accrues.

16 (vii) The possible preservation of seniority, pensions, health
17 benefits, and other applicable accrued benefits of employees of
18 the county impacted by the transfer of governance.

19 (2) Nothing in this subdivision shall be construed as prohibiting
20 the hospital authority from determining the number of employees,
21 the number of full-time equivalent positions, the job descriptions,
22 and the nature and extent of classified employment positions.

23 (3) Employees of the hospital authority are public employees
24 for purposes of Division 3.6 (commencing with Section 810) of
25 Title 1 of the Government Code relating to claims and actions
26 against public entities and public employees.

27 (x) Any hospital authority created pursuant to this section shall
28 be bound by the terms of the memorandum of understanding
29 executed by and between the county and health care and
30 management employee organizations that is in effect as of the date
31 this legislation becomes operative in the county. Upon the
32 expiration of the memorandum of understanding, the hospital
33 authority shall have sole authority to negotiate subsequent
34 memorandums of understanding with appropriate employee
35 organizations. Subsequent memorandums of understanding shall
36 be approved by the hospital authority.

37 (y) The hospital authority created pursuant to this section may
38 borrow from the county and the county may lend the hospital
39 authority funds or issue revenue anticipation notes to obtain those

1 funds necessary to operate the medical center and otherwise provide
2 medical services.

3 (z) The hospital authority shall be subject to state and federal
4 taxation laws that are applicable to counties generally.

5 (aa) The hospital authority, the county, or both, may engage in
6 marketing, advertising, and promotion of the medical and health
7 care services made available to the community at the medical
8 center.

9 (bb) The hospital authority shall not be a “person” subject to
10 suit under the Cartwright Act (Chapter 2 (commencing with Section
11 16700) of Part 2 of Division 7 of the Business and Professions
12 Code).

13 (cc) Notwithstanding Article 4.7 (commencing with Section
14 1125) of Chapter 1 of Division 4 of Title 1 of the Government
15 Code related to incompatible activities, no member of the hospital
16 authority administrative staff shall be considered to be engaged in
17 activities inconsistent and incompatible with his or her duties as
18 a result of employment or affiliation with the county.

19 (dd) (1) The hospital authority may use a computerized
20 management information system in connection with the
21 administration of the medical center.

22 (2) Information maintained in the management information
23 system or in other filing and records maintenance systems that is
24 confidential and protected by law shall not be disclosed except as
25 provided by law.

26 (3) The records of the hospital authority, whether paper records,
27 records maintained in the management information system, or
28 records in any other form, that relate to trade secrets or to payment
29 rates or the determination thereof, or which relate to contract
30 negotiations with providers of health care, shall not be subject to
31 disclosure pursuant to the California Public Records Act (Chapter
32 5 (commencing with Section 6250) of Division 7 of Title 1 of the
33 Government Code). The transmission of the records, or the
34 information contained therein in an alternative form, to the board
35 of supervisors shall not constitute a waiver of exemption from
36 disclosure, and the records and information once transmitted shall
37 be subject to this same exemption. The information, if compelled
38 pursuant to an order of a court of competent jurisdiction or
39 administrative body in a manner permitted by law, shall be limited
40 to in-camera review, which, at the discretion of the court, may

1 include the parties to the proceeding, and shall not be made a part
2 of the court file unless sealed.

3 (ee) (1) Notwithstanding any other law, the governing board
4 may order that a meeting held solely for the purpose of discussion
5 or taking action on hospital authority trade secrets, as defined in
6 subdivision (d) of Section 3426.1 of the Civil Code, shall be held
7 in closed session. The requirements of making a public report of
8 actions taken in closed session and the vote or abstention of every
9 member present may be limited to a brief general description
10 devoid of the information constituting the trade secret.

11 (2) The governing board may delete the portion or portions
12 containing trade secrets from any documents that were finally
13 approved in the closed session that are provided to persons who
14 have made the timely or standing request.

15 (3) Nothing in this section shall be construed as preventing the
16 governing board from meeting in closed session as otherwise
17 provided by law.

18 (ff) Open sessions of the hospital authority shall constitute
19 official proceedings authorized by law within the meaning of
20 Section 47 of the Civil Code. The privileges set forth in that section
21 with respect to official proceedings shall apply to open sessions
22 of the hospital authority.

23 (gg) The hospital authority shall be a public agency for purposes
24 of eligibility with respect to grants and other funding and loan
25 guarantee programs. Contributions to the hospital authority shall
26 be tax deductible to the extent permitted by state and federal law.
27 Nonproprietary income of the hospital authority shall be exempt
28 from state income taxation.

29 (hh) Contracts by and between the hospital authority and the
30 state and contracts by and between the hospital authority and
31 providers of health care, goods, or services may be let on a nonbid
32 basis and shall be exempt from Chapter 2 (commencing with
33 Section 10290) of Part 2 of Division 2 of the Public Contract Code.

34 (ii) (1) Provisions of the Evidence Code, the Government Code,
35 including the Public Records Act (Chapter 5 (commencing with
36 Section 6250) of Division 7 of Title 1 of the Government Code),
37 the Civil Code, the Business and Professions Code, and other
38 applicable law pertaining to the confidentiality of peer review
39 activities of peer review bodies shall apply to the peer review
40 activities of the hospital authority. Peer review proceedings shall

1 constitute an official proceeding authorized by law within the
2 meaning of Section 47 of the Civil Code and those privileges set
3 forth in that section with respect to official proceedings shall apply
4 to peer review proceedings of the hospital authority. If the hospital
5 authority is required by law or contractual obligation to submit to
6 the state or federal government peer review information or
7 information relevant to the credentialing of a participating provider,
8 that submission shall not constitute a waiver of confidentiality.
9 The laws pertaining to the confidentiality of peer review activities
10 shall be together construed as extending, to the extent permitted
11 by law, the maximum degree of protection of confidentiality.

12 (2) Notwithstanding any other law, Section 1461 shall apply to
13 hearings on the reports of hospital medical audit or quality
14 assurance committees.

15 (jj) The hospital authority shall carry general liability insurance
16 to the extent sufficient to cover its activities.

17 (kk) In the event the board of supervisors determines that the
18 hospital authority should no longer function for the purposes as
19 set forth in this chapter, the board of supervisors may, by ordinance,
20 terminate the activities of the hospital authority and expire the
21 hospital authority as an entity.

22 (ll) A hospital authority which is created pursuant to this section
23 but which does not obtain the administration, management, and
24 control of the medical center or which has those duties and
25 responsibilities revoked by the board of supervisors shall not be
26 empowered with the powers enumerated in this section.

27 (mm) (1) The county shall establish baseline data reporting
28 requirements for the medical center consistent with the Medically
29 Indigent Health Care Reporting System (MICRS) program
30 established pursuant to Section 16910 of the Welfare and
31 Institutions Code and shall collect that data for at least one year
32 prior to the final transfer of the medical center to the hospital
33 authority established pursuant to this chapter. The baseline data
34 shall include, but not be limited to, all of the following:

- 35 (A) Inpatient days by facility by quarter.
- 36 (B) Outpatient visits by facility by quarter.
- 37 (C) Emergency room visits by facility by quarter.
- 38 (D) Number of unduplicated users receiving services within the
39 medical center.

1 (2) Upon transfer of the medical center, the county shall
2 establish baseline data reporting requirements for each of the
3 medical center inpatient facilities consistent with data reporting
4 requirements of the Office of Statewide Health Planning and
5 Development, including, but not limited to, monthly average daily
6 census by facility for all of the following:

7 (A) Acute care, excluding newborns.

8 (B) Newborns.

9 (C) Skilled nursing facility, in a distinct part.

10 (3) From the date of transfer of the medical center to the hospital
11 authority, the hospital authority shall provide the county with
12 quarterly reports specified in paragraphs (1) and (2) and any other
13 data required by the county. The county, in consultation with health
14 care consumer groups, shall develop other data requirements that
15 shall include, at a minimum, reasonable measurements of the
16 changes in medical care for the indigent population of Alameda
17 County that result from the transfer of the administration,
18 management, and control of the medical center from the county
19 to the hospital authority.

20 (nn) A hospital authority established pursuant to this section
21 shall comply with the requirements of Sections 53260 and 53261
22 of the Government Code.

23 *SEC. 2. The Legislature finds and declares that a special law*
24 *is necessary and that a general law cannot be made applicable*
25 *within the meaning of Section 16 of Article IV of the California*
26 *Constitution because of the unique needs faced by Alameda County*
27 *with respect to the operation and administration of Alameda*
28 *County Medical Center.*

29 ~~SECTION 1. Section 69841 of the Government Code is~~
30 ~~amended to read:~~

31 ~~69841. Notwithstanding Section 167 of the Code of Civil~~
32 ~~Procedure, the clerk of the superior court shall attend each session~~
33 ~~of the superior court in the county and upon the judges of the court~~
34 ~~in chambers when required.~~